IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Regular Second Appeal No.200 of 1996.
Judgment Reserved on:11.09.2007
Date of decision: 05.10.2007

Koli & Others ….**Appellants**

Versus

Piru Ram & Another ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?

For the Appellants: Mr.B.C. Negi, Advocate.

For Respondent-2: Mr.Ashwani K.Sharma, Advocate.

Dev Darshan Sud,J.

This is the defendants' appeal against the judgment and decree of the learned District Judge, Mandi, reversing the judgment and decree passed by the learned Sub Judge Ist Class, Mandi, dismissing the suit filed by the plaintiff praying for a decree for declaration and injunction that the suit land is the exclusive property of the plaintiff therein and the defendants have no right, title or interest therein and prohibiting and restraining them from interfering in the suit land.

Brief facts of the case requiring consideration of this Court are that Smt.Harmatu

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Whether the reporters of Local Papers may be allowed to see the judgement?

instituted suit against the appellants on the ground that the registered relinquishment deed dated 28.8.1989 Ex.DW-1/A is not binding on the interest of the plaintiff as it was the outcome of fraud and mis-representation practiced on her by the defendants. It was averred that the plaintiff was an old, illiterate and rustic village lady who was brought to Mandi by her stepson Koli and stepdaughters Chandi and Dhuri and Smt.Sunki assuring her that Chandi and Dhuri wanted to relinquish their shares of the property in favour of Koli, Thaliya and Het Ram, defendants No.1 to 3 and the plaintiff being a member of the family, her presence was required before the Revenue Authorities. The plaintiff has specifically averred that neither the scribe of the relinquishment deed Ex.DW-1/A nor the Sub Registrar asked her anything with respect to the relinquishment purported to have been made by her. She pleaded that she has been staying away from her stepson and stepdaughters and Smt.Sunki (the other wife of deceased Lahola). She had been deprived of a sole source of livelihood by the defendants.

The suit was resisted by the defendants on a number of grounds. They refuted the allegations of fraud and submitted that the particulars constituting the acts of fraud and misrepresentation have not been pleaded or proved, the suit was not maintainable and

that the relinquishment deed Ex.DW-1/A has been executed by the plaintiff of her own free will.

The learned trial Court, on a detailed examination of the evidence before it, held that the relinquishment deed was executed by the plaintiff of her own free will and accord and that the allegations by the plaintiff that Ex.DW-1/A was the outcome of fraud were not established on the record. In coming to this conclusion the learned trial Court inter alia considered the evidence of the scribe DW-6, Shri Dina Nath Sharma and DW-1 Registration Officer Shri Pune Ram in detail.

The learned Appellate Court has reversed the judgment on the ground that the plaintiff had, within the shortest possible time, instituted the suit for the reliefs as claimed in the plaint and that this was the natural act/behavior or reaction of a person who had been duped into executing a deed/entering into a transaction against his/her volition. The learned Appellate Court holds that the relinquishment deed Ex.DW-1/A is surrounded by suspicious circumstances and was not an act of free will on the part of the plaintiff. Importantly, it has been held that since the appellants are not in possession of the entire land coupled with the other factors including the fact that the relinquishment had been denounced at the earliest there could be no other conclusion save and

except that the deed was the outcome of fraud etc. as pleaded.

The defendants are now in appeal against the judgment of reversal. The question of law urged for consideration of this Court and formulated with the grounds of appeal which requires to be determined is:

> **"Whether there was any legal evidence to rebut the presumption of validity and genuineness of the relinquishment deed, which emanated from the registration of the document?"**

Learned counsel for the appellants submits that the matter is no longer res integra. He submits that the document Ex.DW-1/A was registered before the Sub Registrar, who has appeared as a witness and the scribe of the deed has also been produced and there is nothing in their evidence to excite suspicion or raise the slightest doubt that their evidence could not be relied upon. He submits that the presumption is that the document Ex.DW-1/A has been read over and explained to the plaintiff. He submits that the learned Appellate Court has failed in discharging the duty cast upon it by law in not considering the evidence in its entirety and ignoring the evidence which is inconvenient to the case set up by the plaintiff.

I have heard learned counsel for the parties and have gone through the record of the case.

DW-1, Shri Pune Ram, was the Sub Registrar posted at Mandi between the years 1986 to 1991. He has affirmed that the endorsement on the obverse of the relinquishment deed Ex.DW-1/A stating that the contents of the deed have been read over and explained to the executant is correct and that this endorsement was signed by the executant/plaintiff only after he had obtained the consent of the plaintiff after the contents of the deed had been explained to her.

DW-6 is Shri Dina Nath Sharma, Advocate, who has prepared Ex.D-1 which is the original of the certified copy of the relinquishment deed Ex.DW-1/A. He states that the contents of the deed were read over to the executant and that it was thumb marked by the parties after the contents had been read over and explained to the executants. I find nothing in the cross-examination of these witnesses to hold that the deed Ex.D-1 and Ex.DW-1/A was the result of fraud practiced on the plaintiff. Surely, it is not the case of the plaintiff that the scribe DW-6, Shri Dina Nath Sharma, DW-1, Registering Officer Shri Pune Ram, and the defendants were in connivance with each other to deprive the plaintiff of her property.

In Shri ***Kirpa Ram and others*** *vs.* ***Smt.Maina, 2002(2) Shim.L.C.213,*** this Court has held :

> *"**10.** Section 60 of the Registration Act specifically provides that certificate endorsed on the document, registered by the Registrar, shall not only be*

admissible in evidence for the purpose of proving that document has duly been registered in the manner provided under the Act but also that the facts mentioned in the document referred to in Section 59 have taken place as mentioned therein.

It is now well settled that presumption of due execution of a document arises from the endorsement of the Sub Registrar under Section 60 of the Act. As far back as in 1928 Privy Council in Sennimalai Goundan and another v. Sellappa Goundan and others, AIR 1929 Privy Council 81, interpreting the provisions of Section 60(2) read with Section 115 of the Evidence Act held that where a person admits execution before the Registrar after the document has been explained to him, it cannot subsequently be accepted that he was ignorant of the nature of transaction. In that case, the plaintiff alleged that his father and brothers, with an intention of defrauding the plaintiff of his legitimate share in the family properties, entered into a fraudulent collusive partition. The trial Court found that plaintiff's case was proved and he decreed the suit. In appeal, it was held that the plaintiff failed to make out the alleged fraud and allowed the appeal. The decree of the trial Court was set aside. The Subordinate Judge had found that the partition was unequal because the land allotted to

the plaintiff was less than allotted to other brothers. It was found that contemporaneously with the partition, some land that fell into the share of plaintiff Karuppa were conveyed to his second wife Nachakkal by a registered sale deed. Nachakkal gave evidence that the transaction was bogus, as she never paid the consideration for the sale though she admitted execution of the sale deed before the Registrar. Her story that she was ignorant of the nature of the transaction, it was held, cannot be accepted as she had admitted the execution of the sale deed before the Registrar.

11. *A Division Bench of this Court Kanwarani Madna Vati and another v. Raghunath Singh and others, AIR 1976 HP 41, interpreting the provisions of Section 62 of the Registration Act held that there is a resumption of correctness of the document if its execution is admitted before the Registrar. The Division Bench in para 20 observed:*

> *"Under Section 60(2) of the Registration Act the certificate given by the registering officer shall be admissible for the purpose of proving that the document has been duly registered in the manner provided by this Act and that the facts mentioned in Section 59 have occurred as*

therein mentioned. Therefore, there is a presumption, which attaches to the correctness of the endorsements made on the document by the registering officer. These endorsements show the presentation of the document personally by Smt.Madna Vati for registration. She was identified by Kr.Jowala Singh and her signatures were lso obtained by the registering officer on both the endorsements, i.e., the endorsement of presentation and that of admitting the contents of the documents and the receipt of the consideration by her. In order to rebut this it was necessary for the defendant No.2 to have produced the Sub Registrar. She did not produce him in the witness box. Therefore, the presumption of correctness shall become conclusive."

(Emphasis supplied)

12. *In the present case as noticed earlier, there is endorsement of the Sub Registrar to the effect that the contents were read over and explained to the vendor-plaintiff Mania Devi and, therefore, the presumption is that the contents of the sale deed were read over and explained to her. The Sub Registrar (DW3) himself is categorical in his evidence that the contents of the sale deed were read over to Maina*

Devi. He duly proved the endorsements. Therefore, in the circumstances, learned first appellate Court was not right while reversing the findings of the trial court on the grounds that the contents of the sale deed were not read over or explained to the plaintiff..

13. *A Single Judge of this Court in Rewat Ram Sharma v. Munshi Ram (RSA No.242 of 1994) decided on December 13, 2001), relying upon Kanwarani Madna VAti, Sennimalai Goundan (supra) and Dinesh Chandra Guha v. Satchindannanda Mukherji, AIR 1972 Orissa 235, held that admission of signatures on the endorsement made by the Registrar by an executant of the document in the absence of anything else to the contrary, would lead to the inference that the plaintiff was present before the Sub Registrar when the document was presented for registration and the onus to rebut the presumption under Section 60(2) of the Registration Act was heavily on the plaintiff which the plaintiff did not discharge. In that case, the case of the plaintiff was that he had borrowed some money from the defendant and had agreed to mortgage his property in favour of the defendant. The plaintiff was taken to the Tehsil Headquarters for the purpose of execution of the mortgage deed. His signatures were obtained by the defendant by making him to believe that it was a mortgage deed and later on, the defendant proclaimed that the*

> *property has been gifted to the defendant and plaintiff realized that instead of mortgage deed, gift deed was executed from him fraudulently by the defendant. He repudiated the gift deed and filed a suit that the gift deed was a result of misrepresentation, fraud and undue influence on the part of the defendant. It is in this context that the Court held that Section 60(2) of the Evidence Act raises presumption as to the correctness of the endorsements made on the document by the Registering Officer".*

The plaintiff has been unable to dislodge the presumption of law which would attach to the endorsement. Evidence is not being re-appreciated, but it is only the legal consequences of what has been established on the record which is being considered. The learned Appellate Court, did not at all consider the legal consequences of Section 60 of the Registration Act. No effort or attempt was made to consider the evidence in its totality to arrive at a conclusion as to whether the endorsement itself was the result of connivance or fraud or that the presumption attached to the execution of the document being executed without fraud and undue influence was rebutted by the plaintiff. In these circumstances, I hold that the judgment of the learned Appellate Court cannot be sustained and cannot persuade myself to take

a different view than the one in ***Kirpa Ram***'s Case supra.

Even when the entire matter is considered without the aid of Section 60 of the Registration Act, I do not find anything in the evidence of DW-1 Shri Pune Ram and DW-6 Shri Dina Nath, even remotely suggests that the document Ex.DW-1/A is the outcome of fraud. This question is, therefore, answered in favour of the appellants.

Resultantly, this appeal is allowed. The judgment and decree of the learned District Judge is set aside. The suit of the plaintiff is dismissed. There shall be no order as to costs.

October 05, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**